

Remarks

With entry of this Response, Claims 1, 4, 7-11, 13, 20-29 are under examination, with Claims 1, 4, 15 and 22 amended.

REJECTION OF CLAIMS 1, 4, 7-11, 13 AND 20-29 UNDER 35 USC § 102(B)

Claims 1, 4, 7-11, and 20-29 were rejected under 35 USC § 102(b) as being anticipated by Ersek, et al., US Patent No. 5,336,263. The Examiner stated that "Ersek discloses biphasic compositions..." The Examiner also stated that "see also paragraph bridging columns 5-6, 'For soft tissue...[a] desirable material for the textured particles....[is] polyethylene')". Applicant traverses this rejection and this statement in particular.

Ersek, et al. teach implantation of particles that have physical characteristics that mimic the augmentation site. Ersek, et al. teach, at the paragraph bridging columns 5-6, that "For a soft tissue, a soft elastomer such as silicone rubber is a desirable material for the textured particles....When a firm area is being treated, such as connective tissue or the like, polytetrafluoroethylene (Teflon) or polyethylene may be satisfactorily utilized." As seen in its entirety, there is no teaching in Ersek, et al. that polyethylene is "[a] desirable material" for soft tissue, instead, the teaching of Ersek, et al. is that polyethylene is used for "firm areas" of connective tissue.

Further, Ersek et al. teach that "fabrication of the spheroids from a malleable polymer material such as a silicone rubber is preferred as it will more closely imitate the texture of the natural tissue it replaces." See Ersek, et al., Col. 8, lines 26-29. Ersek et al. teach away from using hard or non-elastic materials for soft tissue augmentation, and Ersek et al. specifically teach that polyethylene is not used for soft tissue augmentation, but that soft elastomers are used. Ersek, et al. teach that polyethylene is used for treatment of "firm areas". Applicant's currently claimed invention is directed to soft tissue treatment using polyethylene particles, and thus, Ersek, et al. does not provide an anticipatory teaching of Applicant's invention, but instead, provides a teaching away from Applicant's currently claimed invention.

The rejection of Claims 1, 4, 7 and 22 over the entire teaching of Ersek, et al., is traversed for the reasons above that Ersek, et al. does not provide a teaching of Applicant's currently claimed invention. The further rejection of dependent Claims 8-11, and 24-27, 13 and 23, 20-21 and 28-29, as being anticipated by Ersek, et al., for specific limitations does not lessen the

teaching away of Ersek, et al., that requires the particles to be elastomeric, such as silicone rubber, if used in soft tissues, and for firm areas, such as connective tissues, to be treated with hard particles such as polyethylene. Applicant requests the Examiner to withdraw this rejection.

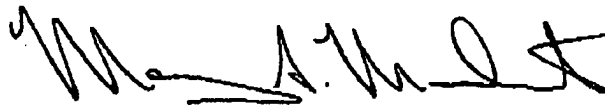
SUMMARY

Applicant has provided a complete response to the Office Action mailed on July 27, 2004. Accordingly, Applicant respectfully requests allowance of all of the pending claims, and rejoinder of the non-elected claims.

Applicant also submits a paper for changing the small entity status of this application with this Response.

Applicant has provided a Petition for a One Month Extension of Time, and accompanying fees to be charged to Deposit Account No. 20-1507. However, if the Examiner determines that other fees are required, authorization is hereby provided to charge the requisite fee to Deposit Account No. 20-1507.

Respectfully submitted,



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